

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Third Periodic Review of the)	MB Docket No. 07-91
Commission's Rules and Policies)	
Affecting the Conversion)	
To Digital Television)	

To: Secretary, FCC

COMMENTS

Northeastern Educational Television of Ohio, Inc. ("NETO"), by its attorneys, provides these comments in response to the *Notice of Proposed Rulemaking* in the referenced docket, FCC 07-70 (released May 18, 2007) ("*NPRM*").

NETO applauds the FCC's determination to have a strong DTV system in place across the country on the February 17, 2009 digital transition deadline, and it fully supports that goal. However, NETO strongly urges the FCC to exercise its discretion under the law establishing the transition deadline to provide substantially more flexibility to stations regarding the process and timing of their achieving their "ultimate" or "final" DTV transmission facilities.

Specifically, with respect to WNEO-DT, Alliance, Ohio, NETO urges the FCC to provide flexibility in establishing the modification process for stations returning to their analog channel for post-transition digital operation. In WNEO-DT's case, such leeway will be necessary with regard to (a) allowing final post-transition facilities that do not match exactly with the DTV Table of Allotments – specifically to permit use of the station's current top-mount analog antenna and tower position for its post-transition digital facility, with corresponding changes in height and power, as needed to avoid a lengthy loss of service during transition; and (b) the

timing of the construction of its post-transition digital facility, and the corresponding termination of current analog and digital operation on the same tower.

BACKGROUND

NETO is a non-profit 501(c)(3) organization and the licensee of noncommercial educational stations WEAO(TV), Akron, Ohio and WNEO(TV), Alliance, Ohio. Stations WEAO and WNEO are PBS member stations in northeastern Ohio, broadcasting a wide variety of high-quality news, public affairs, informational, educational and entertainment programming, including children's programming, to their communities.

Station WNEO was allotted Channel 46 as its pre-transition digital channel, and WNEO-DT is currently licensed and operating on Channel 46 with an antenna side-mounted on the WNEO(TV) tower with ERP of 400 kW at 223 m HAAT. *See* FCC File BLEDT-20031103ABQ, granted July 20, 2004.

It was always NETO's intention ultimately to return to its analog Channel 45 as its permanent digital channel. It sought the allocation of DTV Channel 45 in the January, 2005 First Round of the FCC's digital channel election process. That election was approved by the FCC, and the Table of DTV Allotments in the just-released *Seventh Report and Order and Eighth Further Notice of Proposed Rulemaking* in MM Docket No. 87-268 ("Seventh Report and Order") (rel. Aug. 6, 2007) specifies facilities for WNEO-DT on Channel 45 of 388 kW at 223 m HAAT. The top-mounted WNEO-TV analog antenna has a HAAT of 253 m.

I. The FCC should be flexible in the process for and timing of construction of final DTV facilities.

NETO strongly urges the FCC to exercise its discretion under the law establishing the February 17, 2009 digital transition deadline by providing substantial flexibility to stations regarding the process for and timing of their achieving their "ultimate" or "final" DTV

transmission facilities, so long as facilities of some sort are constructed on permanent DTV channels by February 17, 2009. Clearly, the FCC has discretion to show such flexibility with respect to stations achieving their final replicating or maximized DTV facilities. The Digital Television and Public Safety Act of 2005, Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006), established February 17, 2009 as the deadline for the end of analog transmissions by all full power stations, and for the end of analog and digital transmissions on all out-of-core channels, but there is no requirement in the law, or even a suggestion, that the deadline needs to become a deadline as well for final DTV facilities.

NETO urges that the FCC should take advantage of the flexibility in the law, by similarly according flexibility to stations to achieve their final DTV facilities at the time and in the manner that they are best able to do so, subject to the minimal requirement that all DTV stations be operating on their permanent DTV channels by the transition deadline (unless construction extensions are authorized by particular circumstances). The process and timing contemplated by the FCC in the *NPRM* will create enormous difficulties for literally hundreds of stations across the country, who will virtually simultaneously have to take down analog or interim DTV stations, to install equipment for their DTV stations (to get their DTV stations operating on their new permanent DTV channels in the case of over 600 stations whose permanent DTV channels are not the same as their interim channels – including WNEO-DT – and nearly 140 stations that are “singletons,” or to move DTV equipment to locations now occupied by analog equipment in the case of many other stations), particularly since that time occurs in the middle of the winter, which in many parts of the country makes towers inaccessible or tower work difficult or dangerous.

In addition to the probable physical impossibility of many stations making DTV facilities changes in the immediate run-up to the transition deadline, there are many other factors that will affect stations as they play out the transition in their particular circumstances. Many stations, WNEO-DT included, have yet to apply for construction permits for their final DTV facilities, and can't yet know when they can do that, how long the process will take, and what difficulties or unexpected issues they will face. Many of these stations, for one reason or another, may want or need to apply for facilities that do not precisely line up with the facilities allotted to them. Also, many stations may have continuing financial or other constraints that limit the facilities they can deploy now on their permanent DTV facilities, but have every intention to ultimately construct facilities reaching the largest possible audience.

For all these reasons, generally, NETO urges the FCC to be as flexible as the law allows, focusing on identifying and addressing ways to facilitate a smooth transition in February of 2009, and facilitating each station's own path and timing in achieving its final DTV facilities, so long as some minimally acceptable level of DTV service is being provided on permanent DTV channels as of the deadline.

II. The FCC should not require stations to construct facilities that precisely match the facilities specified in the Table of DTV Allotments.

In paragraph 60 of the *NPRM*, the FCC recognizes that stations with different pre-and post-transition DTV channels must apply for new construction permits to build new facilities on the channel allotments in the new DTV Table of Allotments, and invites comments on how to approach this "greater challenge" (as compared to that facing other stations). NETO urges the FCC to provide flexibility for stations to address this challenge, in particular by not requiring stations to construct facilities that precisely match those specified in the DTV Table of Allotments, especially where the differences are minor.

In WNEO-DT's case, NETO's preference for modifying the station to its post-transition facility involves using the station's current analog Channel 45 antenna and top-mount position for the post-transition DTV Channel 45 operation. Whereas replacing the presently side-mounted DTV Channel 46 antenna with the post-transition DTV Channel 45 antenna could require at least one month of "down-time" – including scheduling a tower crew to remove the side-mount antenna, shipping it to the manufacturer for re-channelization, waiting for its return, and then utilizing a second tower crew to reinstall it on the tower – NETO estimates that switching the existing top-mount analog Channel 45 antenna over to the post-transition DTV Channel 45 use may only take about seven (7) days (for removal of the existing system and installation of the new system, re-channeling the associated equipment, and completing a proof of performance). As of result of utilizing the top-mount position for the post-transition facility, WNEO-DT will need to operate with a slightly increased HAAT, and corresponding decrease in ERP, as compared to the DTV Table of Allotments, in order to retain replication of analog and current digital contours. *See* attached coverage map comparison. The flexibility to allow for such relatively minor differences would greatly benefit NETO by permitting it to make use of the top-mount position (and currently top-mounted Channel 45 antenna) and avoid a lengthy disruption in its broadcast service during the transition process.

III. The FCC should accommodate early termination of analog and pre-transition DTV operation when necessary to facilitate completion of post-transition facilities.

In paragraph 37 of the *NPRM*, the FCC states that stations may need to end analog operations before the February 17, 2009 transition date if they "would like to switch their side-mounted digital antenna with their top-mounted analog antenna before the end of transition" and, starting with paragraph 44, seeks comment on allowing in-core analog stations to cease service prior to the 2009 transition date. NETO submits that early termination of analog service would

be in the public interest for WNEO-DT and similarly situated stations in precisely these circumstances that the FCC envisions: where it “is directly related to the construction and operation of post-transition facilities and would ensure that the station...can meet the deadline.”¹

NETO currently plans to “switch-over” WNEO-DT to its post-transition operation on DTV Channel 45 in October or November 2008, when NETO has secured a scheduling slot with its transmitter and antenna manufacturer to perform the necessary equipment modifications. Given the need to coordinate with manufacturers and antenna crews burdened by other broadcasters’ digital transitions, the annual onset of winter weather conditions, and the February 19, 2007 analog shut-off date, the Fall 2008 timing is necessary for WNEO-DT’s completion of construction and commencement of post-transition operation. Importantly, due to plans for top-mounting the post-transition DTV antenna, it will be necessary to cease the station’s co-located analog and pre-transition DTV operation at the same time.

CONCLUSION

NETO urges the FCC to adopt flexible rules consistent with the comments above.

Respectfully submitted,

**NORTHEASTERN EDUCATIONAL
TELEVISION OF OHIO, INC.**

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¹ *NPRM* at ¶ 44 and 47.

WNEO-DT CH45 388 kW DA Coverage
Comparison With 10 kW using present top mounted omni-antenna

WNEO-DT

Latitude: 40-54-23 N
Longitude: 080-54-39 W
ERP: 388.00 kW
Channel: 45
Frequency: 659.0 MHz
AMSL Height: 583.0 m
Horiz. Pattern: Directional
1-19-2007

WNEO-DT1

Latitude: 40-54-23 N
Longitude: 080-54-39 W
ERP: 10.00 kW
Channel: 45
Frequency: 665.0 MHz
AMSL Height: 612.0 m
Horiz. Pattern: Omni
8-14-2007

388 kW = Black
10 kW = Red

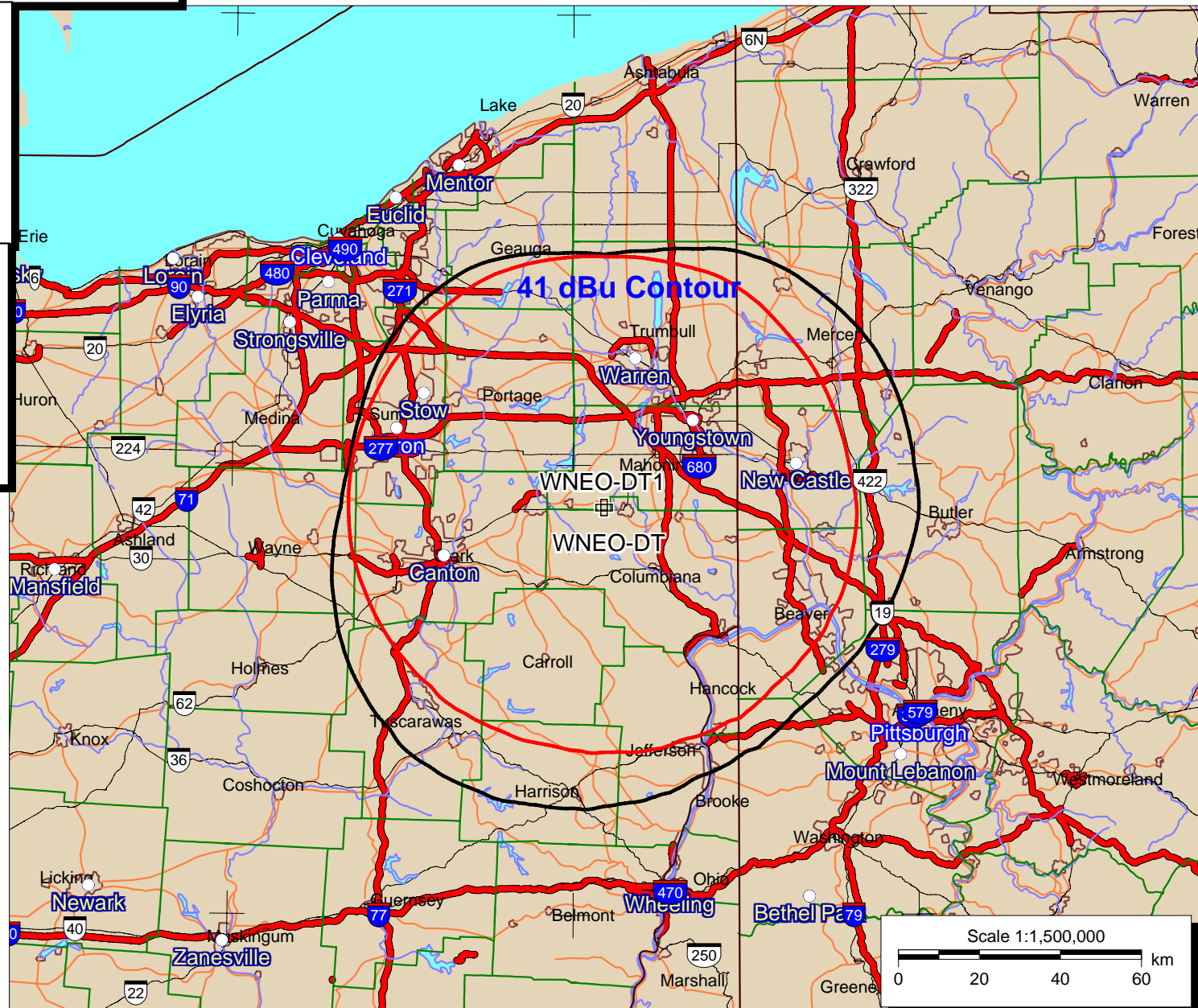


Fig. 4